

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

2009 JAN 15 P 4:31

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KRISTEN HILL,

Defendant.

DEFAULT

BY:

DEPUTY CLERK

Case No. 1:08CV00068

Honorable J. Thomas Greene

It appearing from the above Praecipe and the records and files in this matter that the defendant, Kristen Hill, having ~~been duly served with process~~ *executed a waiver of summons* herein, has failed to appear, plead, or otherwise defend as provided in the Federal Rules of Civil Procedure; therefore, the default of said defendant is hereby entered in this matter.

DATED this 15<sup>th</sup> day of January 2009.

D. MARK JONES  
Clerk of the Court

By: *[Signature]*  
Deputy Clerk  
United States District Court

**United States District Court  
for the District of Utah**

FILED  
U.S. DISTRICT COURT

**Request and Order for Modifying Conditions of Supervision  
With Consent of the Offender**

*(Waiver of hearing attached)*

2009 JAN 15 P 3:19

DISTRICT OF UTAH

Name of Offender: **Jacob H. McQuiston**

Docket Number: **2:03-CR-00107-001-DS**

Name of Sentencing Judicial Officer: **Honorable David Sam  
Senior United States District Judge**

Date of Original Sentence: **August 13, 2003**

Original Offense: **Unlawful Possession of Firearms**

Original Sentence: **37 Months BOP Custody/36 Months Supervised Release**

Date of Violation Sentence: **January 28, 2008**

Violation Sentence: **12 Months and 1 day BOP Custody/24 Months Supervised Release**

Type of Supervision: **Supervised Release**

Current Supervision Began: **November 24, 2008**

**PETITIONING THE COURT**


☒ To modify the conditions of supervision as follows:

1. The defendant shall participate in a substance-abuse evaluation and/or treatment under a co-payment plan as directed by the probation office. During the course of treatment, the defendant shall not consume alcohol nor frequent any establishment where alcohol is the primary item of order.
2. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115 fee to partially defray the costs of collection and testing.
3. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the probation office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
4. The defendant shall maintain child support payments and shall keep current on such payments to be monitored by the United States Probation Office.

**CAUSE**


On January 28, 2008, the defendant was sentenced to 12 months and 1 day custody, with a 24-month term of supervised release to follow, due to a violation of supervised release. At the time of sentencing, the previously ordered special conditions were not included. The United States Probation Office is requesting the special conditions as ordered on the defendant's original sentence on August 15, 2003, be amended and added to his conditions of supervised release.

I declare under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
John S. Pyburn  
United States Probation Officer  
Date: December 15, 2008

**THE COURT ORDERS:**

- ☒ The modification of conditions as noted above  
☐ No action  
☐ Other

  
\_\_\_\_\_  
Honorable David Sam  
Senior United States District Judge

Date: 1/15/09

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
PROBATION AND PRETRIAL SERVICES OFFICE**

**WAIVER OF RIGHT TO HEARING PRIOR TO  
MODIFICATION OF CONDITIONS OF SUPERVISION**

I have been advised by United States Probation Officer John S. Pyburn that he/she has submitted a petition and report to the Court recommending that the Court modify the conditions of my supervision in Case No.2:03-CR-00107-001-DS. The modification would be:

1. The defendant shall participate in a substance-abuse evaluation and/or treatment under a co-payment plan as directed by the probation office. During the course of treatment, the defendant shall not consume alcohol nor frequent any establishment where alcohol is the primary item of order.
2. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115 fee to partially defray the costs of collection and testing.
3. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the probation office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
4. The defendant shall maintain child support payments and shall keep current on such payments to be monitored by the United States Probation Office.

I understand that should the Court so modify my conditions of supervision, I will be required to abide by the new condition(s) as well as all conditions previously imposed. I also understand the Court may issue a warrant and revoke supervision for a violation of the new condition(s) as well as those conditions previously imposed by the Court. I understand I have a right to a hearing on the petition and to prior notice of the date and time of the hearing. I understand that I have a right to the assistance of counsel at that hearing.

Understanding all of the above, I hereby waive the right to a hearing on the probation officer's petition, and to prior notice of such hearing. I have read or had read to me the above, and I fully understand it. I give full consent to the Court considering and acting upon the probation officer's petition to modify the conditions of my supervision without a hearing. I hereby affirmatively state that I do not request a hearing on said petition.

Jacob H. McQuiston

Jacob H. McQuiston

1-9-09

Date

John S. Pyburn  
Witness:

John S. Pyburn

United States Probation Officer

STEVEN B. KILLPACK, Federal Defender (#1808)  
CARLOS A. GARCIA, Assistant Federal Defender (#6877)  
UTAH FEDERAL DEFENDER OFFICE  
46 West Broadway, Suite 110  
Salt Lake City, Utah 84101  
Telephone: (801) 524-4010  
Facsimile: (801) 524-4060  
Attorney for Defendant

FILED  
U.S. DISTRICT COURT

2009 JAN 16 A 8:40

DISTRICT OF UTAH

BY: DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES OTONEIL GARZA,

Defendant.

ORDER GRANTING MOTION TO  
WITHDRAW AS COUNSEL

Case No. 2:03 CR555 TS

Judge Stewart

This matter has been reviewed by the Court on a Motion to Withdraw as Counsel filed by Carlos A. Garcia, Assistant Federal Defender; the Court being fully advised and good cause appearing, IT IS HEREBY ORDERED:

Carlos A. Garcia, Assistant Federal Defender, is hereby granted leave to withdraw as counsel of record for Defendant.

Dated this 15<sup>th</sup> day of January, 2009.

BY THE COURT:

  
TED STEWART  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

CLEALON B. MANN; NANELL H.  
MANN; RONALD J. PASKETT;  
MARSHA M. PASKETT; CARDIFF  
ASSOCIATED PROPERTY OWNERS;  
SALT LAKE COUNTY, UTAH; UTAH  
STATE TAX COMMISSION; NORMA  
K. BROWN, AS CONSERVATOR FOR  
MORBA H. CLEMENT; NORMA  
K. BROWN, AS TRUSTEE FOR THE  
MORBA H. CLEMENT FAMILY TRUST

Defendants.

Civil No. 2:04-CV-00205-DB

ORDER SEALING DOCUMENT

Upon motion of the United States to seal a document, and good cause having been shown, it is hereby ORDERED that Exhibit A to the United States' Motion for Extension of Time to File Response to Motions, located at docket number 74 in the above-captioned case, shall be sealed.

DATED this 16<sup>th</sup> day of January, 2009.



HONORABLE DEE BENSON  
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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ARGYLL EQUITIES, LLC, and ARGYLL  
INVESTMENTS, LLC,

Plaintiffs,

vs.

CLARK REID POWELL, et al.,

Defendants.

ORDER

Case No. 2:06-CV-358-TC

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On January 15, 2009, the court held a hearing on the Plaintiffs' motion for summary judgment (Dkt. No. 105). For the reasons set forth during the hearing, the motion is DENIED.

The court further ORDERS:

1. The parties will each compile a list of individuals they wish to depose. The parties will exchange those lists by Tuesday, January 27, 2009.
2. The parties must provide opposing council with two dates on which each witness listed is available to depose. Those dates must be before April 1, 2009.
3. Opposing council must choose one of the two dates provided for the date of the deposition. The parties will then provide the court with a proposed order listing the scheduled deposition dates.
4. The court will order when the depositions are to be taken. The court will only allow rescheduling of a deposition in the event of a death to a close family member or a



verifiable medical emergency.

5. A status conference will be held on April 7, 2009 at 2:30pm.

DATED this 16th day of January, 2009.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL  
Chief Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

FILED  
U.S. DISTRICT COURT

2009 JAN 15 P 3:19

\*\*\*\*\*

KIRT RIPPSTEIN, JACK PETERSON,  
ALLEN PEARSON, JERRED LeFEVRE  
and TROY MORGAN,

Plaintiffs,


vs.

SEVIER COUNTY, SEVIER COUNTY  
SHERIFF PHIL BARNEY and JOHN  
DOES 1-X,

Defendants.

Civil No. 2:06-CV-1063J

**ORDER**

DISTRICT CLERK  
BY:   
DEPUTY CLERK

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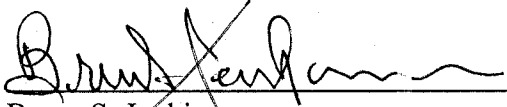
As to the remaining Plaintiffs, Defendants' Motion for Summary Judgment, relating to the power of the Sheriff of Sevier County, a county of less than 20,000 persons, under adopted and appropriate county policies and procedures, to re-assign deputies who occupy non-exempt positions and who retain both rank and salary, is hereby GRANTED.

GRANTED as well is the motion of Sevier County.

Counsel for Defendants should prepare and submit a roster of undisputed facts and a suggested form of judgment, and do so within 20 days.

DATED this 15 day of January, 2009.

BY THE COURT:



Bruce S. Jenkins  
United States Senior District Judge

FILED  
U.S. DISTRICT COURT

2009 JAN 16 P 4:08

Scott M. Petersen, A7599  
David N. Kelley, A9137  
FABIAN & CLENDENIN,  
A Professional Corporation  
215 South State Street, 12th Floor  
Salt Lake City, Utah 84111  
Telephone: (801) 531-8900  
Facsimile: (801) 531-1719  
E-mail: spetersen@fabianlaw.com  
dkelley@fabianlaw.com

DISTRICT OF UTAH

BY: \_\_\_\_\_  
COURT CLERK

RECEIVED  
JAN 16 2009  
CLERK OF  
DISTRICT COURT

Attorneys for Empire HealthChoice Assurance Inc.

IN THE UNITED STATES DISTRICT COURT  
STATE OF UTAH, CENTRAL DIVISION

IHC HEALTH SERVICES, INC. d/b/a/  
LDS HOSPITAL

Plaintiff,

vs.

EMPIRE HEALTHCHOICE  
ASSURANCE, INC. d/b/a  
EMPIRE BLUECROSS BLUESHIELD

Defendant.

**ORDER DISMISSING PLAINTIFF'S  
BREACH OF CONTRACT CLAIM**

Case No. 2:07-CV-676-TC

Pursuant to the Stipulation of the parties wherein they agreed that Plaintiff's claim for Breach of Contract would be dismissed with prejudice, and Defendant's Motion for Judgment on the Pleadings would be withdrawn, and for good cause appearing thereby;

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//

It is hereby ORDERED that Plaintiff's claim for Breach of Contract is hereby dismissed with prejudice, and Defendant's Motion for Judgment on the Pleadings is withdrawn and shall not be considered by the Court at this time.

DATED this 15 day of Jan, 2009.

BY THE COURT

Tena Campbell  
Honorable Tena Campbell II, Chief  
U.S. District Court Judge

Approved as to Form:

/s/Stephen H. Urquhart  
Stephen H. Urquhart  
Attorney for Plaintiff

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

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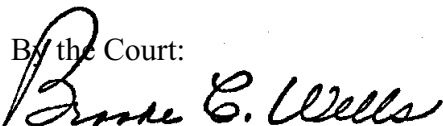
LEANN RICHEY,	:	Court No. 2:07CV 00690 BCW
Plaintiff,	:	
vs.	:	ORDER GRANTING MOTION TO CONTINUE
JO ANNE B. BARNHART,	:	
Commissioner of Social Security,	:	Magistrate Judge Brooke C. Wells
Defendant.	:	

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Based on Defendant's Unopposed Motion to Continue Hearing and for good cause appearing,

IT IS HEREBY ORDERED THAT the hearing currently scheduled for Wednesday, January 21, 2009 at 10:0 a.m. is continued. The parties are to notify the Court within 45 days from the date of this order of the status of the case and whether a new hearing is necessary.

DATED this 15th day of January, 2009.

By the Court:  
  
Honorable Brooke C. Wells  
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

FILED  
U.S. DISTRICT COURT  
JAN 15 P 3:19

\*\*\*\*\*

CHRISTINA CLINE,

Plaintiff,

vs.

CHASE MANHATTAN BANK USA,  
NATIONAL ASSOCIATION,

Defendant.

CHASE BANK USA, N.A.,

Counterclaimant,

vs.

CHRISTINA CLINE,

Counter-defendant.

Civil No. 2:07-CV-0728 BSJ

**ORDER**

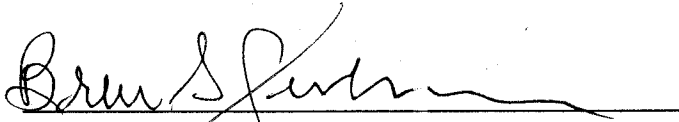
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The Motion of Chase Bank, USA, N.A. for Summary Judgment and to confirm  
arbitration award is GRANTED.

Counsel for Chase Bank, USA, N.A. shall submit a suggested form of Judgment within  
10 days.

DATED this 15 day of January, 2009.

BY THE COURT:

  
Bruce S. Jenkins  
United States Senior District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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STORAGECRAFT TECHNOLOGY  
CORPORATION,

Plaintiff,

vs.

SYMANTEC CORPORATION,

Defendant.

ORDER and MEMORANDUM  
DECISION

Case No. 2:07-CV-856 CW

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Now before the court is Symantec Corporation's ("Symantec's") objection to Magistrate Judge Wells' order granting StorageCraft Technology Corporation's ("Storagecraft's") motion for a protective order (Dkt. No. 61). For the reasons set forth below, the court SUSTAINS Symantec's objection and REVERSES Judge Wells' order.

Symantec has brought a claim against StorageCraft alleging that StorageCraft misappropriated trade secret information from Symantec. In response to Symantec's discovery requests relevant to this claim, StorageCraft sought a protective order. StorageCraft argued that Symantec had not identified the alleged trade secret with particularity, precluding Symantec's attempts at discovery on that claim. Symantec disagreed, pointing out that it had narrowed its claimed trade secret information to three particular documents.

At a July 17, 2008 hearing, Judge Wells heard argument and granted StorageCraft's motion for a protective order. On July 23, 2008, Judge Wells issued a written order further

explaining her ruling at the hearing. (See Dkt. No. 55.) In that order, Judge Wells stated that to be allowed discovery on its trade secret claim, Symantec was required to identify the trade secret information with “adequate specificity to inform the defendant[] what it is alleged to have misappropriated.” (Id. at 2, quoting Sit-Up Ltd. v. IAC/Interactive Corp., Case No. 05 Civ. 9292 (DLC), 2008 WL 463884, \*11 (S.D.N.Y. Feb. 20, 2008)). The order then states that Symantec’s “trade secrets are essentially a wish-list for a new product. Such a ‘wish-list’ does not meet the reasonable particularity standard.” (Dkt. No. 55 at 2.) Finally, Judge Wells ordered Symantec to “narrow and define with more specificity” the claimed trade secret and denied Symantec discovery of any StorageCraft product competing with a certain Symantec product until Symantec “adequately identifies” the trade secret “with reasonable particularity.” (Id.)

When a magistrate judge issues an order on non-dispositive discovery matters and a party objects, the district court reviews the magistrate’s order under the “clearly erroneous or contrary to the law standard.” First Union Mortgage Corp. v. Smith, 229 F.3d 992, 995 (10th Cir. 2000) (citation omitted). “Under the clearly erroneous standard, the reviewing court [must] affirm unless it on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” Allen v. Sybase, Inc., 468 F.3d 642, 658 (10th Cir. 2006) (internal quotation marks and citations omitted).

“Under the ‘contrary to law’ standard, the district court conducts a plenary review of the magistrate judge’s purely legal determinations, setting aside the magistrate judge’s order only if it applied an incorrect legal standard,” or if it “misapplie[d] relevant statutes, case law, or rules of procedure,”

Barton v. Zimmer, Inc., Case No. 1:06-CV-208 TLS, 2008 WL 2484604, \*1 (N.D. Ind. June 19, 2008) (citations omitted).



There is no question that the magistrate's July 23 order correctly stated the correct legal standard. That is, Symantec is required to identify its claimed trade secret with reasonable particularity before being allowed discovery on that claim. But the court sees no way in which Symantec could be more particular in its identification of its claimed trade secrets. Symantec has clearly identified three discrete documents as compilations and unequivocally stated that the compilations are the trade secrets it alleges StorageCraft misappropriated.

The question of whether the compilations actually qualify as trade secrets or if they are nothing more than "wish-lists" is a question going to the ultimate merits of Symantec's claim. The procedures for challenging the merits of a trade secret claim prior to trial are set out in Rules 12 and 56 of the Federal Rules of Civil Procedure and are not properly challenged under discovery rules, including the requirement that the trade secret be identified with particularity. By concluding that Symantec's specified documents were "wish-lists," the magistrate judge made a ruling on the merits of Symantec's claim in denying discovery. Accordingly, the magistrate's order must be reversed.

### **ORDER**

For the reasons set forth above, Symantec's objection to Judge Wells' July 23, 2008 order granting StorageCraft's motion for a protective order is SUSTAINED and that order is REVERSED. The parties are instructed to continue discovery under the federal rules and in light of the most recent scheduling order and to continue to raise any discovery disputes before Judge Wells.

SO ORDERED this 16th day of January, 2009.

BY THE COURT:

A handwritten signature in cursive script, reading "Clark Waddoups".

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Clark Waddoups  
United States District Judge

FILED  
U.S. DISTRICT COURT

2009 JAN 14 P 4: 28

DISTRICT CLERK

BY: POJUTY CLERK

Richard D. Burbidge (#0492)  
Jefferson W. Gross (#8339)  
Robert J. Shelby (#8319)  
Robert P.K. Mooney (#10789)  
BURBIDGE, MITCHELL & GROSS  
215 South State Street, Suite 920  
Salt Lake City, Utah 84111  
Telephone: 801-355-6677  
Facsimile: 801-355-2341

*Attorneys for Defendants*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH CENTRAL DIVISION

PAMELA MILLER; RANDY HOWARD; and  
DONNA PATTERSON; on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

BASIC RESEARCH, LLC; DYNAKOR  
PHARMACAL, LLC; WESTERN  
HOLDINGS, LLC; DENNIS GAY; DANIEL  
B. MOWREY, Ph.D; MITCHELL K.  
FRIEDLANDER; and DOES 1 through 50,

Defendants.

**STIPULATED AMENDED  
SCHEDULING ORDER**

Case No. 2:07-cv-00871 **TS**

~~District Judge Clark Waddoups~~

Magistrate Judge Samuel Alba

Upon consideration of the Parties' stipulated motion, it is hereby ORDERED that said motion is granted and the Scheduling Order in this matter is amended as follows. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

1.	PRELIMINARY MATTERS	DATE
	Nature of claims and any affirmative defenses:	
a.	Was Rule 26(f)(1) Conference held?	Yes <u>1/31/2008</u>
b.	Has Attorney Planning Meeting Form been submitted?	Yes <u>2/15/2008</u>
c.	Was 26(a)(1) initial disclosure completed?	Yes <u>2/28/2008</u>

**2. DISCOVERY LIMITATIONS**

Discovery shall be segregated into two phases. First, discovery will occur on matters pertaining to class certification issues. Such discovery shall be completed by May 1, 2009. Second, discovery on all other issues shall commence after the Court rules on any motions pertaining to class certification.

	<b>NUMBER</b>
a. Maximum Number of Depositions by Plaintiffs	<u>20</u>
b. Maximum Number of Depositions by Defendants	<u>20</u> <u>7</u>
c. Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	<u>25</u>
d. Maximum Interrogatories by both sides	<u>20</u>
e. Maximum requests for admissions by both sides	<u>Unlimited</u>
f. Maximum requests for production by both sides	

**3. AMENDMENT OF PLEADINGS/ADDING PARTIES**

	<b>DATE</b>
a. Last Day to File Motion to Amend Pleadings	<u>8/7/2009</u>
b. Last Day to File Motion to Add Parties	<u>8/7/2009</u>

**4. RULE 26(a)(2) REPORTS FROM EXPERTS**

	<b>DATE</b>
a. With respect to class certification issues, Plaintiffs will serve their expert report(s), if any, contemporaneously with their motion for class certification. Defendants will have thirty (30) days thereafter to conduct expert discovery with respect to any expert(s) providing opinions in support of said motion.  Defendants will serve their expert report(s), if any, contemporaneously with their opposition to Plaintiffs' motion for class certification. Defendants will have thirty (30) days thereafter to conduct expert discovery with respect to any expert(s) providing opinions in support of said opposition.	
b. Plaintiffs (for all other issues)	<u>2/19/2010</u>
c. Defendants (for all other issues)	<u>2/19/2010</u>

- | 5. OTHER DEADLINES                           |  | DATE              |
|--|--|-------------------|
| a.   | Discovery to be completed by:  | <u>5/1/2009</u>   |
|  | Class certification discovery (except expert discovery relating to class certification as identified in Paragraph 4.a above) |                   |
|  | Fact discovery (on all other issues)   | <u>1/8/2010</u>   |
|  | Expert discovery (on all other issues)   | <u>4/30/2010</u>  |
| b.   | Final date for supplementation of disclosures and discovery under Rule 26 (e)  | <u>6/4/2010</u>   |
| c.   | Deadline for filing dispositive or potentially dispositive motions   | <u>7/16/2010</u>  |
| d.   | Deadline for filing motion for class certification   | <u>5/15/2009</u>  |
| e.   | Deadline for filing opposition to motion for class certification   | <u>7/17/2009</u>  |
| f.   | Deadline for filing reply memorandum re: class certification   | <u>8/14/2009</u>  |
| 6. SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION |  | DATE              |
| a.   | Referral to Court-Annexed Mediation  | No                |
| b.   | Referral to Court-Annexed Arbitration  | No                |
| c.   | Evaluate case for Settlement/ADR on  | <u>9/24/2009</u>  |
| d.   | Settlement probability:  | Unknown           |
|  | <i>Specify # of days for Bench or Jury trial as appropriate.</i>   |                   |
|  | <i>Shaded areas will be completed by the court.</i>  |                   |
| 7.   | TRIAL AND PREPARATION FOR TRIAL  | TIME DATE         |
| a.   | Rule 26(a)(3) Pretrial Disclosures   |                   |
|  | Plaintiffs   | <u>11/5/2010</u>  |
|  | Defendants   | <u>11/19/2010</u> |
| b.   | Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)   |                   |

- c. Special Attorney Conference on or before 12/3/2010
- d. Settlement Conference on or before 12/3/2010
- e. Final Pretrial Conference 2:30 PM 1/10/11
- f. Trial Length
- i. Jury Trial 3 Weeks 8:30 a.m. 1/24/11

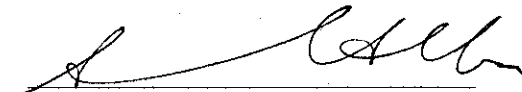
8.

**OTHER MATTERS**

Counsel should contact chambers staff of the District Judge regarding *Daubert* and *Markman* motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions *in Limine* should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under *Daubert* must be raised by written motion before the final pre-trial conference.

Dated this 9<sup>th</sup> day of January, 2009.

BY THE COURT:



Hon. Samuel Alba  
U.S. Magistrate Judge

ROBIN KENT LJUNGBERG (6056)  
ATTORNEY FOR DEFENDANT  
39 Exchange Place, Suite 200  
Salt Lake City, Utah 84111  
Telephone: (801) 532-5835  
Facsimile: (801) 532-5041

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES of AMERICA,

Plaintiff,

V.

JERRY C. HUFF,

Defendant.

[illegible]


ORDER TO CONTINUE TRIAL

Case No. 2:08CR00371 CW

Honorable Clark Waddoups

Based on the defendant's motion and good cause appearing; it is hereby ordered that the trial, currently scheduled for February 23, 2009 be continued to allow hearing on defendant's pending motion to sever counts. Any delay arising from defendant's request is excluded under the Speedy Trial Act.

DATED this 15th day of January, 2009.

  
HONORABLE CLARK WADDOUPS  
United States District Court Judge

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

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UNITED STATES OF AMERICA,

Plaintiff,

v.

VARO KEN,

Defendant.

CASE: 2:08CR00530 CW

PRELIMINARY ORDER OF FORFEITURE

JUDGE: CLARK WADDOUPS

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IT IS HEREBY ORDERED that:

1. As a result of a plea of guilty to Count 1 of the Indictment for which the government sought forfeiture pursuant to 18 U.S.C. § 924(d)(1) the defendant Varo Ken shall forfeit to the United States all property, real or personal, that is derived from, used, or intended to be used in violation of 18 U.S.C. § 922 (g)(1), including but not limited to:

- Taurus 9mm Handgun

2. The Court has determined that based on a guilty plea of Possession of a Firearm by a Convicted Felon, that the above-named properties is subject to forfeiture, that the defendant had an interest in the properties, and that the government has established the requisite nexus between such properties and such offense.

3. Upon entry of this Order the Attorney General, or its designee is authorized to seize and conduct any discovery proper in identifying, locating, or disposing of the properties subject to forfeiture, in accordance with Fed. R. Crim. P. 32.2(b)(3).

4. Upon entry of this Order the Attorney General or its designee is authorized to



commence any applicable proceeding to comply with statutes governing third party interests, including giving notice of this Order.

5. The United States shall publish notice of this Order on its intent to dispose of the property in such a manner as the Attorney General may direct. The United States may also, to the extent practicable, provide written notice to any person known to have an alleged interest in the subject currency and property.

6. Any person, other than the above named defendants, asserting a legal interest in the subject property may, within thirty days of the final publication of notice or receipt of notice, whichever is earlier, petition the Court for a hearing without a jury to adjudicate the validity of his alleged interest in the subject property, and amendment of the order of forfeiture pursuant to 21 U.S.C. § 853.

7. Pursuant to Fed. R. Crim. P. 32.2(b)(3), this Preliminary Order of Forfeiture shall become final as to the defendants at the time of sentencing and shall be made part of the sentence and included in the judgment.

8. Any petition filed by a third party asserting an interest in the subject currency and property shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's acquisition of the right, title, or interest in the subject property, any additional facts supporting the petitioners claim and relief sought.


9. After the disposition of any motion filed under Fed. R. Crim. P. 32.2(c)(1)(A) and before a hearing on the petition, discovery may be conducted in accordance with the Federal Rules of Criminal Procedure upon a showing that such discovery is necessary or desirable to resolve factual issues.

10. The United States shall have clear title to the subject property following the Court's disposition of all third party interests, or, if none, following the expiration of the period provided in 21 U.S.C. § 853 which is incorporated by 18 U.S.C. § 982(b) for the filing of third party petitions.

11. The Court shall retain jurisdiction to enforce this Order, and to amend it as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

Dated this 16th day of January, 2009.

BY THE COURT:

  
CLARK WADDOUPS, Judge  
United States District Court

United States District Court  
for the District of Utah

FILED  
U.S. DISTRICT COURT

**Request and Order to Amend Previous Petition on Conditions of Pretrial Release**

Name of Defendant: **Daniel Weilacher**

Docket Number: **2:08-CR-566-001-JTG**

Name of Judicial Officer: **Honorable Paul M. Warner, United States Magistrate Judge**

Date of Release: **September 30, 2008**

2009 JAN 15 P 2:30  
DISTRICT CLERK  
BY: [Signature]

---

**PETITIONING THE COURT**

[ X ] To amend the petition signed on December 4, 2008 as follows:

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**CAUSE**

The pretrial officer believes that the defendant has violated the conditions of supervision as follows:

*Original Allegations:*

**Allegation Number One:** The defendant failed to get prior permission from Pretrial Services before leaving the state of Utah to travel to the state of Montana.

**Allegation Number Two:** The defendant failed to drug test on November 19, 2008, as directed.

**Allegation Number Three:** The defendant has failed to maintain or obtain verifiable employment or has failed to provide verification of obtaining or maintaining verifiable employment to Pretrial Services.

*Additional Allegations:*

**Allegation Number Four:** The defendant failed to report to Pretrial Services as directed on December 16, 2008, December 23, 2008, and January 6, 2009.

I declare under penalty of perjury that the foregoing is true and correct

[Signature]

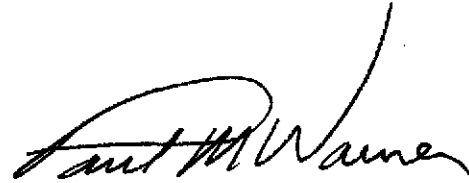
---

Annie Carr  
United States Pretrial Services Officer  
Date: January 15, 2009

---

**THE COURT ORDERS:**

- ☒ That the original petition be amended to include all allegations outlined.
- ☐ No action
- ☐ Other



**Honorable Paul M. Warner**  
**United States Magistrate Judge**

Date: 15 January 2009

Rodney G. Snow (Bar No. 3028)  
Sarah L. Campbell (Bar No. 12052)  
CLYDE SNOW & SESSIONS  
201 South Main Street, 13th Floor  
Salt Lake City, Utah 84111-2216  
Telephone: 801-322-2516  
Fax: 801-521-6280

Attorneys for Defendant

---

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

---


UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	Case No. 2:08-cr-766CW
	:	
-vs-	:	
	:	
RICHARD DAVID WYSS,	:	ORDER TO CONTINUE
	:	SENTENCING
	:	
Defendant.	:	

---

This Court having considered the Defendant's Motion to Continue Sentencing,  
and the lack of opposition by the United States, and good cause appearing therefore,

It is hereby ORDERED that the sentencing in this matter presently set for March  
3, 2009 is continued to April 7, 2009 at 3:00 p.m.

DATED this 16<sup>th</sup> day of January, 2009.

  
CLARK WADDOUPS  
United States District Judge

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order to Continue Sentencing was served electronically through the Court's CM/ECF system this 15th day of January 2009 on the following:

Robert A. Lund, Esq.  
United States Attorney's Office  
185 South State Street, 3rd Floor  
Salt Lake City, Utah 84111

/s/Sarah L. Campbell

Scott M. Lilja (4231)  
Lisa B. Bohman (10733)  
VANCOTT BAGLEY CORNWALL & MCCARTHY, P.C.  
36 S. State Street, Suite 1900  
Salt Lake City, Utah 84111-1478  
Telephone: (801) 532-3333  
Facsimile: (801) 534-0058  
*Attorneys for Defendants EMC Mortgage Corp.  
and Mortgage Electronic Registration Systems, Inc.*

FILED  
U.S. DISTRICT COURT  
2009 JAN 15 PM 2:20  
RECEIVED  
DISTRICT CLERK  
OFFICE OF  
BY: TENA CAMPBELL

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH,  
CENTRAL DIVISION**

MICHAEL T. PINES, an individual,

Plaintiff,

vs.

EMC MORTGAGE CORPORATION, a  
Delaware corporation, CAL-WESTERN  
RECONVEYANCE CORP., a California  
corporation; JAMES H. WOODALL, in his  
capacity as Successor Trustee and Attorney,  
EXPERIAN INFORMATION SOLUTIONS,  
INC., an Ohio Corporation, EQUIFAX  
INFORMATION SERVICES, LLC, a Georgia  
corporation, TRANSUNION, LLC, a  
Delaware corporation,

Defendants.

**ORDER GRANTING PRO HAC  
VICE MOTION**

Case No. 2:08-CV-137

Judge Tena Campbell

Magistrate Judge Brooke Wells

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of  
DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Robert J. Emanuel in the

United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 15<sup>th</sup> day of January, 2009.

Jena Campbell

U.S. District Judge



IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

MICHAEL T. PINES,

Plaintiff,

vs.

EMC MORTGAGE CORP., et al.,

Defendants.

---

ORDER and MEMORANDUM  
DECISION

Case No. 2:08-CV-137 TC

This matter comes before the court on Plaintiff Michael T. Pines’ Motion for Preliminary Injunction (Dkt. No. 109), Motion for Leave to File Proposed Supplemental Complaint (Dkt. No. 124), and Motion for Sanctions under Rule 11 (Dkt. No. 152). For the reasons discussed below, Mr. Pines’ motions are DENIED.

**BACKGROUND**

Mr. Pines brought this action against EMC Mortgage Corporation (“EMC”) and others for allegedly misrepresenting his credit information in violation of federal statute and common law. These allegations arose out of Mr Pines’ purchase, financing, and sale of four properties in Utah. In addition to the case before this court, Mr. Pines also filed an action in state court in January of 2007 to stop foreclosure proceedings on one of his properties. Pines v. EMC Mortgage Corp., et al., No. 070400309 (4th Dist. Ct. Utah filed Jan. 25, 2007) (hereinafter the “state court action”). EMC and Cal-Western are also defendants in that suit. The parties

stipulated to a preliminary injunction in the state court case in which the defendants were enjoined from proceeding with any collections. Mr. Pines has sought voluntarily dismissal of his state court suit, which was opposed by the defendants. In addition, defendant EMC filed a counterclaim in the state action.

Mr. Pines petitioned this court for a temporary restraining order (TRO) and preliminary injunction (Dkt. No. 109). The motion for a TRO was denied, but the court reserved judgment on the motion for a preliminary injunction (Dkt. No. 111).

## **ANALYSIS**

### **I. Preliminary Injunction**

To obtain a preliminary injunction, the movant must show: “(1) a substantial likelihood of success on the merits; (2) irreparable harm to the movant if the injunction is denied; (3) the threatened injury outweighs the harm that the preliminary injunction may cause the opposing party; and (4) the injunction, if issued, will not adversely affect the public interest.” General Motors Corp. v. Urban Gorilla, LLC, 500 F.3d 1222, 1226 (10th Cir. 2007). In general, “a preliminary injunction is an extraordinary remedy; it is the exception rather than the rule.” Id. (quotation omitted).

In his motion Mr. Pines asks this court to grant an injunction restraining and enjoining the Defendants from making misrepresentations regarding the amounts due on any loan made to Mr. Pines, from assessing or collecting any fee not permitted by law and not permitted in the loan agreement, and harassing the holder of any loan that was in default at the time it was obtained by the defendants. The order requested by Mr. Pines appears to be nearly identical to a stipulated final judgment and order issued in United States District Court for the Eastern District of Texas

in an unrelated case brought by the Federal Trade Commission (FTC) against defendants that include EMC (the “Texas Order”).

In its order denying Mr. Pines’ motion for a TRO, this court explained that Mr. Pines had shown neither a threat of irreparable harm nor a substantial likelihood of success on the merits. (Dkt. No. 111) Nothing in the briefing before the court changes that assessment. Mr. Pines only argues that he will be harmed if “the Defendants continue to attempt to collect loans that have been paid in full.” (Pl.’s Mem. in Supp. of TRO/PI at 4) That collection, however, would only be pursuant to an order in the state court action. This court has no power to either review a state court judgment or prevent the enforcement of a state court judgment. See Kiowa Indian Tribe v. Hoover, 150 F.3d 1163, 1169 (10th Cir.1998) (“[A] federal district court cannot review matters actually decided by a state court nor can it issue any declaratory relief that is ‘inextricably intertwined’ with the state court judgment.” (citation and quotation omitted)). Mr. Pines has presented no evidence of any collection efforts by the Defendants not connected with the ongoing litigation in the state court action. Mr. Pines has therefore failed to meet his burden of showing irreparable harm that will stem from the denial of his motion.

In addition, Mr. Pines has failed to show a likelihood of success on the merits. As the court explained in its order “[t]he memorandum and exhibits accompanying Mr. Pines’ untimely-filed motion for partial summary judgment strike the court as providing an incomplete story of the underlying events here.” (Dkt. No. 111 at 2) The court concluded Mr. Pines had not shown a substantial likelihood of success on the merits. Mr. Pines has provided the court with no argument in his memorandum as to why this conclusion was in error. Neither has he supplemented his exhibits pertinent to this question. As a result, the original conclusion of the

court stands.

Furthermore, as explained in the court's previous order, Mr. Pines had not shown the threatened injury outweighs the possible harm to the defendants or that the injunction is not contrary to public interests. At best, these prongs of the preliminary injunction test are neutral.

As a result, Mr. Pines has not carried his burden and the motion for a preliminary injunction is DENIED.

## **II. Amended/Supplemental Complaint**

Mr. Pines further moves this court to supplement his complaint pursuant to Federal Rule of Civil Procedure 15(d). He seeks to add a claim for injunctive relief requesting enforcement of the Texas Order in this court relating to EMC's attempts to obtain a judgment in state court. "As a general matter, the standard used by courts in deciding to grant or deny leave to supplement is the same standard used in deciding whether to grant or deny leave to amend." Fowler v. Hodge, 94 F. App'x 710, 714 (10th Cir. 2004) (unpublished). The court may refuse leave to amend or supplement a complaint "because of undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the amendment, etc." Moore v. Reynolds, 153 F.3d 1086, 1116 (10th Cir. 1998).

In this case undue delay and futility demonstrate that the motion should be denied. First, the deadline for amended pleadings passed on October 13, 2008 (Dkt. No. 92). Mr. Pines was plainly aware of this claim before that deadline passed. The underlying events supporting his claim for injunctive relief were described in his original complaint. To the extent Mr. Pines argues that the Texas Order is an intervening event, that argument is without merit. The Texas

Order was issued on September 9, 2008, over a month before the deadline to amend the pleadings. Furthermore, the Texas Order has no relevance to Mr. Pines' case. Had Mr. Pines believed that such injunctive relief was warranted based on his complaint, he could have requested that relief at any time. That a different court, in an unrelated matter accepted a stipulated order granting such relief does not create an intervening event.

Second, the proposed amendment or supplement is properly rejected based on futility. As with the motion for a preliminary injunction, Mr. Pines seeks to have this court issue an order somehow enjoining a potential judgment in state court. As explained above, this court is without the power to do so and therefore cannot provide plaintiff with relief against the alleged harm. Furthermore, it is not clear what legal theory Mr. Pines is requesting injunctive relief under. The only possible interpretation is that EMC's actions in this case have somehow violated the Texas Order.<sup>1</sup> This alone, however, does not state a claim for which relief can be granted.

To the extent Mr. Pines seeks to add claims under the Fair Debt Collection Practices Act (FDCPA) that were previously dismissed by this court (Dkt. No. 85) he fails to explain how EMC meets the definition of "debt collector" as required by the Act. As explained in its previous order the complaint has no "allegations that could be read to infer that his loans were in default when EMC purchased them." (Dkt. No. 85 at 6) The court notes that Mr. Pines memorandum does not address the FDCPA claims. It does it explain why this repleading of these claims are timely, given that the claims were dismissed on July 22, 2008. (Dkt. No. 85) Nor does it address

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<sup>1</sup>The court notes that Mr. Pines requests the enforcement of the Texas Order against all Defendants. Only Defendant EMC was a party to the Texas case. Enforcement of the order against the other Defendants would be particularly inappropriate.

the issues laid out in the previous order that caused this court to conclude Mr. Pines had failed to state a claim under the FDCPA. The FDCPA claims are both untimely and futile.

As a result, the motion to supplement the complaint is DENIED.

### **III. Rule 11 Sanctions**

Mr. Pines also moves for Federal Rule of Civil Procedure 11 sanctions against defense council for EMC , Cal-Western and Mr. Woodall. He contends they are in violation of Rule 11 by filing papers asserting the right to foreclose on Mr. Pines' property. In addition to sanctions, Mr. Pines asks this court to bar the defendants from submitting any pleading asserting Mr. Pines was in default on any loan. He also seeks a ruling that would prevent the defendants, in the event they obtain a favorable state court judgment, from relying on such a judgment in this court.

Mr. Pines' motion is wholly without merit. First, Mr. Pines did not give the Defendants twenty-one days to withdraw the offending pleadings before filing his motion with this court, as required by Fed. R. Civ. P. 11(c)(1)(A). The "safe harbor" provision of Rule 11 requires that motions for sanctions "shall be served . . . but not filed with or presented to the court unless, within 21 days after service of the motion" the challenged pleadings or claims have not been "withdrawn or appropriately corrected." Mr. Pines does not contest that he failed to comply with this requirement, but argues only that it would have been futile. Compliance with the Federal Rules of Civil Procedure cannot be avoided simply by one party's assessment that compliance would be "a waste of time." (Pl.'s Reply in Supp. of Rule 11 Sanctions at 10) The motion should be denied on this ground alone.

Furthermore, a close reading of the motions and exhibits demonstrates that Defendants have engaged in no sanctionable conduct. Mr. Pines did not provide any citations to pleadings

before this court in which the Defendants assert they have the right to foreclose on his property. Neither did the court's review of the record produce any such statements. Rather, Defendant EMC has consistently argued only that they are pursuing a counterclaim in state court for costs associated with a foreclosure. Defendant Cal-Western and Mr. Woodall have argued only that they opposed the dismissal of Mr. Pines' state court action. The state court pleadings submitted by the Defendants fully support this contention. In addition, to the extent that Mr. Pines asks this court to order that a valid state court judgment not be enforced, the court once again reminds Mr. Pines that it is without the power to do so. The court also reminds Mr. Pines that any alleged sanctionable conduct that occurs in state court must be argued before that court. This court will not and cannot oversee state court proceedings.

The Defendants have requested that the court impose sanctions on Mr. Pines for the cost of defending this motion. While the court chooses not to impose such sanctions at this time, if Mr. Pines continues to file motions without proper argument and evidentiary support, the court will reconsider its decision with respect to future motions.

### **CONCLUSION**

This court is not the proper forum for relitigating state court proceedings. Nor does this court have appellate review over state court decisions. To the extent Mr. Pines believes fraud has been committed in Utah State Court, he must raise that issue with the Utah State Court. Furthermore, this court does not have the power to refuse to honor a state court decision nor can it enjoin the enforcement of such a decision.

## ORDER

For the foregoing reasons Mr. Pines' Motion for Preliminary Injunction (Dkt. No. 109) is DENIED, Mr. Pines' Motion for Leave to File Proposed Supplemental Complaint (Dkt. No. 124) is DENIED, and Mr. Pines' Motion for Sanctions under Rule 11 (Dkt. No. 152) is DENIED.

DATED this 16th day of January, 2009.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL  
Chief Judge



FILED  
U.S. DISTRICT COURT

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

2009 JAN 16 AM 11:05

DISTRICT CLERK

KLEIN-BECKER USA, et al.,

Plaintiffs,

vs.

HEALTH CENTER FOR BETTER LIVING,  
et al.,

Defendants.

BY  
DEPUTY CLERK

ORDER TO SHOW CAUSE

Case No. 2:08 CV 255 TC

On January 16, 2009, the court held a status conference in this case because of its concern that the case was not being actively prosecuted. Notice was sent to counsel for the parties. No counsel appeared at the hearing, and, as a consequence the court orders that Plaintiff show cause within ten days of the date of this order why this case should not be dismissed for failure to prosecute.

DATED this 16th day of January, 2009.

BY THE COURT:

*Tena Campbell*

TENA CAMPBELL  
Chief Judge

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**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**  
**CENTRAL DIVISION**

---

**PAULA SELF, et al.,**  
**Plaintiffs,**

**v.**

**TPUSA, INC. and**  
**TELEPERFORMANCE GROUP, INC.,**  
**Defendants.**

**MEMORANDUM DECISION**  
**AND ORDER**

**Case No. 2:08-cv-395-PMW**

**Magistrate Judge Paul M. Warner**

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Before the court is TPUSA, Inc. and Teleperformance Group, Inc.’s (collectively, “Defendants”) ex parte motion for a temporary restraining order (“TRO”).<sup>1</sup> Pursuant to civil rule 7-1(f) of the Rules of Practice for the United States District Court for the District of Utah, the court has concluded that oral argument is not necessary and will determine the motions on the basis of Defendants’ written submissions. *See* DUCivR 7-1(f).

In an order dated September 19, 2008, this court set forth certain standards with respect to a website that Paula Self, et al.’s (collectively, “Plaintiffs”) counsel created for purposes of soliciting plaintiffs for the instant lawsuit.<sup>2</sup> In essence, this court required Plaintiffs counsel to modify any misleading or conclusory statements on the website. Specifically, this court ordered that any information presented on Plaintiffs’ counsel’s website must be factually accurate and

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<sup>1</sup> *See* docket no. 109.

<sup>2</sup> *See* docket no. 58.

reflect that Plaintiffs' allegations and contentions in this case are not established, uncontested facts. Thereafter, Plaintiffs' counsel made changes to the website in accordance with this court's direction and filed a motion for the court to approve those changes.<sup>3</sup> In an order dated November 6, 2008, this court granted Plaintiffs' motion and approved the changes to the website.<sup>4</sup>

In the instant motion, Defendants assert that they have discovered a billboard on Bangerter Highway in Salt Lake City that violates the spirit of this court's September 19, 2008 order setting forth the standards for the above-referenced website. Along with their motion, Defendants have submitted photographs of the billboard. The billboard is entitled, "Teleperformance Unpaid Wages Lawsuit." The billboard directs the reader to Plaintiffs' counsel in this case, "Attorney Sharon Preston," and contains Plaintiffs' counsel's street address and telephone number, as well as the address of the above-referenced website. Other than a background photograph, the foregoing comprises all of the information contained on the billboard.

Based on those facts, Defendants request that the court issue a TRO that orders Plaintiffs' counsel to immediately effect removal of the billboard, as well as any other similar signs that may be in existence anywhere in the United States. In addition, Defendants request that this

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<sup>3</sup> See docket no. 62.

<sup>4</sup> See docket no. 79.

court impose sanctions on Plaintiffs “for their blatant disregard of [the court’s] directives regarding conclusionary communications to the pu[ta]tive class members.”<sup>5</sup>

The standards are the same for issuance of either a TRO or a preliminary injunction under rule 65 of the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 65; *Klein-Becker USA, LLC v. Collagen Corp.*, No. 2:07-cv-873-TS, 2008 U.S. Dist. LEXIS 85478, at \*1–2 (D. Utah Oct. 22, 2008). A party seeking a TRO or a preliminary injunction

must show: (1) a substantial likelihood of success on the merits; (2) irreparable harm to the movant if the [TRO or] injunction is denied; (3) the threatened injury outweighs the harms that the [TRO or] preliminary injunction may cause the opposing party; and (4) the [TRO or] injunction, if issued, will not adversely affect the public interest.

*Wilderness Workshop v. United States Bureau of Land Mgmt.*, 531 F.3d 1220, 1224 (10th Cir. 2008) (quotations and citation omitted). Because injunctive relief, such as a TRO or preliminary injunction, “is an extraordinary remedy, the [movant’s] right to relief must be clear and unequivocal.” *Id.* (quotations and citation omitted) (alteration in original).

The court has considered the required four elements against the high burden of proof for issuance of a TRO, *see id.*, and concludes that Defendants have failed to demonstrate that the elements are satisfied in this case.

As to the first element, Defendants have failed to present any argument concerning whether they have a substantial likelihood of success on the merits of Plaintiffs’ claims. Accordingly, they have failed to carry their heavy burden with respect to that element. That

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<sup>5</sup> Docket no. 110 at 4.

notwithstanding, the court notes that this case is still in the early stages of litigation, thereby making it unlikely that Defendants could demonstrate a substantial likelihood of success on all of Plaintiffs' claims by "clear and unequivocal" evidence. *Id.* (quotations and citation omitted).

Turning to the second element, Defendants have failed to establish that they will suffer irreparable harm if their motion is denied. The court has reviewed the photographs of the allegedly offending billboard and concludes that it is not likely to cause Defendants any harm, let alone irreparable harm. The billboard contains Plaintiffs' counsel's name, street address, and phone number, as well as the address to the above-referenced website. None of that information can be considered inappropriate or harmful. Indeed, the court previously allowed Plaintiffs' counsel to retain the address of the website and approved the content of the website. In the court's view, the only portion of the billboard that could be construed as potentially harmful is the title, "Teleperformance Unpaid Wages Lawsuit." The court disagrees with Defendants' argument that the billboard's title "suggests that, as a factual matter, Teleperformance does not pay its workers and is a law breaker."<sup>6</sup> The court concludes that, even to a lay person, the title of the billboard is nothing more than a factual statement. The billboard simply indicates that there is an unpaid wages lawsuit pending and that Plaintiffs' counsel is somehow involved with that lawsuit, all of which is factually accurate. Beyond that, the billboard simply directs the reader either to Plaintiffs' counsel or to the above-referenced website, all of which the court views as entirely appropriate. The court concludes that the billboard falls squarely within "Plaintiff[s]"

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<sup>6</sup> *Id.* at 3.

right to properly solicit [p]laintiffs in this action and to engage in free speech,” which Defendants explicitly recognize in the memorandum in support of their motion.<sup>7</sup>

Concerning the third element, the court concludes that the alleged injury to Defendants does not outweigh the harm that the TRO may cause Plaintiffs if it is issued. Defendants failed to present any argument on this point. In addition, the court has already concluded that Defendants are not likely to suffer any harm, let alone irreparable harm, as a result of the billboard. Consequently, it logically follows that if a TRO were issued, the balancing of harms required by the third factor falls in favor of Plaintiffs.

As to the fourth element, Defendants have failed to present any argument concerning whether issuance of a TRO would adversely affect the public interest. Accordingly, they have failed to carry their heavy burden on that element. Even putting that failure aside, the court concludes that issuance of a TRO under these circumstances would adversely affect the public interest. As previously noted, Defendants have recognized “Plaintiff[s’] right to properly solicit [p]laintiffs in this action and to engage in free speech,”<sup>8</sup> and the court has concluded that the billboard in question falls squarely within that right. The court has determined that issuance of a TRO would impinge upon that right, thereby adversely affecting the public interest.

As a final matter, the court finds it noteworthy that Defendants have recognized and correctly stated the four elements that must be satisfied in order to obtain a TRO but have failed

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

to specifically address any of those elements in the memorandum in support of their motion. Instead, Defendants argue only that the billboard violates the spirit of this court's September 19, 2008 order. Even if Defendants had been able to persuade the court that the billboard violates the standards set forth in the September 19, 2008 order, that alone would be an insufficient legal basis for issuance of a TRO.

For all of these reasons, Defendants' ex parte motion for a TRO is **DENIED**.

**IT IS SO ORDERED.**

DATED this 16th day of January, 2009.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul M. Warner", is written over a horizontal line.

PAUL M. WARNER  
United States Magistrate Judge

KENNETH R. IVORY (8393)  
IVORY LAW, P.C.  
9067 S. 1300 WEST  
SUITE 304  
WEST JORDAN, UT 84088  
TEL. (801) 571-5515  
FAX (801) 571-5516  
ATTORNEY FOR PLAINTIFFS

FILED  
U.S. DISTRICT COURT

2009 JAN 15 A 11:23

DISTRICT OF UTAH

BY: DEPUTY CLERK

RECEIVED  
OFFICE OF  
JUDGE TERRY CAMPBELL

IN THE UNITED STATES DISTRICT COURT  
FOR UTAH - CENTRAL DISTRICT

DEEP BLUE, a Nevada corporation,  
ALEXANDER LINDALE, LLC, a Utah  
limited liability company, and WILF BLUM,  
an individual,

Plaintiffs,

vs.

EDWARD KRAJEWSKI, an individual, and  
JOHN DOES 1-10, individuals.

Defendants.

**Permanent Injunction Order**

Case: 2:08cv00405

Based on the Stipulation for Order of Permanent Injunction on file herein, and  
good cause appearing therefore, it is hereby

**ORDERED** that Krajewski, for himself and his agents, heirs, affiliates and  
assigns, shall immediately cease and forever hereafter refrain from and be enjoined from,  
directly or indirectly, expressly or impliedly, publishing or in any other way  
communicating statements:

- A. of or concerning trade secrets and/or proprietary information of Plaintiffs,  
including but not limited to methods, processes, discussions, plans,

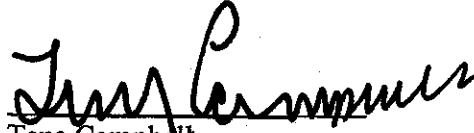


techniques, equipment, locations, discoveries, recovered materials, research projects, sources of supplies, financial data and marketing, contract amounts and/or salaries, corporate income, disbursements, expenditures, and /or merchandising systems or plans of Plaintiffs,

- B. or engaging in any conduct, that is in any way, to the most remote degree, disparaging to Plaintiffs, any of their officers, directors, shareholders, employees, agents, customers, service providers, family members, or affiliates, including, but not limited to, any statement that to the most remote degree disparages the products, services, operations, finances, financial condition, capabilities or any other aspect of the business of Plaintiffs; and
- C. or otherwise taking any action which could in any degree be expected to adversely affect Plaintiffs' corporate, personal or professional reputation, or that of any officers, directors, shareholders, employees, agents, customers, service providers, family members, or affiliates of Plaintiffs.

**IT IS FURTHER ORDERED** that the above captioned action is hereby dismissed, without prejudice, each of the parties shall bear his or her own attorney's fees and costs of court incurred herein, subject to the terms and conditions of the Settlement Agreement between the parties.

**IT IS SO ORDERED** by the Court, this 15<sup>th</sup> day of January 2009.

  
Tena Campbell  
United States District Judge

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

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STACY BROWN,	:	
	:	Court No. 2:08CV 00627BCW
Plaintiff,	:	
	:	
vs.	:	ORDER
	:	
MICHAEL J. ASTRUE,	:	
Commissioner Of Social Security,	:	
	:	Magistrate Judge Brooke C. Wells
Defendant.	:	

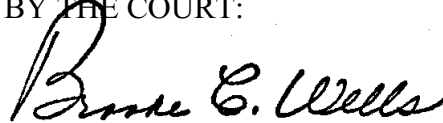
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Based upon Defendant's Unopposed Motion for Enlargement of Time and good cause appearing therefore,

IT IS HEREBY ORDERED that Defendant may have up to and including February 16, 2009,  
to answer or otherwise respond to Plaintiff's Complaint.

DATED this 15th day of January, 2009.

BY THE COURT:



---

Honorable Brooke C. Wells  
United States Magistrate Judge

ERIN RILEY (8375)  
Assistant Attorney General  
MARK L. SHURTLEFF (4666)  
Utah Attorney General  
160 East 300 South, 6th Floor  
PO BOX 140854  
Salt Lake City, Utah 84114-0854  
Telephone: (801) 366-0180

Respondent's counsel

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

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FOREST WHITTLE,

Petitioner,

v.

STEVEN TURLEY, Warden,

Respondent.

Case No. **2:08-CV-767-DAK-SA**

**ORDER ENLARGING TIME TO  
RESPOND TO PETITION**

United States Magistrate Judge  
Samuel Alba

Based upon Respondent's motion for enlargement of time, and good cause appearing  
therefore, **THE COURT HEREBY ORDERS THAT:**

Respondent shall respond to the petition for writ of habeas corpus within 30 days after  
receipt of the underlying criminal case record in case # 951900481.

DATED 16<sup>th</sup> January 2009.

BY THE COURT:



Samuel Alba  
United States Magistrate Judge

FILED  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

2009 JAN 14 P 2:58

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

DALE A. SHAKLEE, as Personal  
Representative on behalf of the beneficiaries  
of ALAN D. SHAKLEE, deceased,  
Plaintiff

v.

BASIC ENERGY SERVICES, INC.;  
BONSNESS CONSULTING, INC.; JEFF  
BONSNESS, individually; QUESTAR  
EXPLORATION AND PRODUCTION  
COMPANY,

Defendants.

ORDER FOR PRO HAC VICE  
ADMISSION

Case No. 2:08-cv-883  
Judge Tena Campbell

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of  
DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Joe M. Teig, P.C. in the United  
States District Court, District of Utah in the subject case is GRANTED.

DATED this 14<sup>th</sup> day of January, 2009.

Tena Campbell  
U.S. District Judge

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH CENTRAL DIVISION

FILED

U.S. DISTRICT COURT

**Midwest Office Inc**

**Plaintiff,**

**vs.**

**RHB Direct, LLC dba Office  
Furniture Blowout**

**Defendant.**

2009 JAN 15 P 4:31

**DEFAULT CERTIFICATE**

BY:

DEPUTY CLERK

**Case No. 2:08 cv 966 SA**

Defendants RHB Direct, Llc dba Office Furniture Blowout, having been duly served with a summons and complaint on December 18, 2008 and proof of service having been filed with the court on December 22, 2008, and the defendants having failed to appear and answer the plaintiff's complaint on file or otherwise defaulted and the time for answer having expired, the default of the defendants is entered according to law, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure.

Date: January 15, 2009

D. Mark Jones, Clerk of Court

By:

Louise S. York, Chief Deputy

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IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF UTAH CENTRAL DIVISION

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1-800-CONTACTS, INC., a Delaware  
Corporation,

Plaintiff,

vs.

MEMORIAL EYE, PA dba  
SHIPMYCONTACTS.COM, SHIP-MY-  
CONTACTS.COM, and IWANT  
CONTACTS.COM, a Texas Professional  
Association,

Defendant.

ORDER GRANTING JOINT  
MOTION TO ENLARGE TIME  
FOR DEFENDANT TO  
RESPOND TO PLAINTIFF'S  
COMPLAINT

Civil No. 2:08-cv-0983-DN

Magistrate Judge David Nuffer

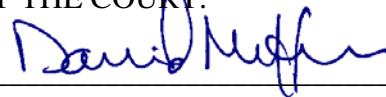
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BASED upon the Parties' Joint Motion to Enlarge Time for Defendant to  
Respond to Plaintiff's Complaint, and good cause appearing, the Court enters the  
following order:

Defendant has up to and including February 9, 2009, to serve its Answer or other  
response to Plaintiff's Complaint.

SO ORDERED this 16<sup>th</sup> day of January, 2009.

BY THE COURT:



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HONORABLE DAVID NUFFER  
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA

Plaintiff,

Adam Patrick Hemmelgarn  
Defendant

2009 JAN 15 P 2:30

Docket No.: 2:08-MJ-347-001-BCW

BY:

**CONSENT TO MODIFY CONDITIONS OF RELEASE**

I, Adam Patrick Hemmelgarn, have discussed with Pretrial Services Officer Annie Carr, modification of my release conditions as follows:

- The defendant will submit to all the terms and conditions of computer monitoring.

I consent to this modification of my release conditions and agree to abide by this modification.

Adam Patrick Hemmelgarn  
Defendant

Annie Carr  
Pretrial Services Officer

12/31/08  
Date

1/6/09  
Date

I have reviewed the conditions with my client and concur that this modification is appropriate.

Brenda J. Brator  
Defense Counsel

12/31/08  
Date

**ORDER OF THE COURT**

- ☒ The above modification of conditions of release is ordered, to be effective on 1/15/09, 2008.
- ☐ The above modification of conditions of release is not ordered.

Brooke C. Wells  
Honorable Brooke C. Wells  
United States Magistrate Judge

1/15/09  
Date

**United States District Court  
for the District of Utah**

**Criminal Pretrial Instructions**

The prosecution has an open file policy.

Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

Counsel must have all exhibits premarked by the clerk for the district judge before trial.

If negotiations are not completed for a plea by the plea deadline, the case will be tried.

In cases assigned to Judge Cassell, counsel are directed to meet and confer about the possibility of a plea, and before the deadline report to chambers whether the matter will proceed to trial.



**United States District Court  
for the District of Utah**

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FILED  
U.S. DISTRICT COURT

2009 JAN 15 P 2:28

RECEIVED

DISTRICT COURT

JUDGE TENA CAMPBELL

BY:

DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JERRY ROBERT PETTY,

Defendant.

**ORDER TO  
TRANSFER JUDGE  
ASSIGNMENT**

Case No. 2:99 CR 412

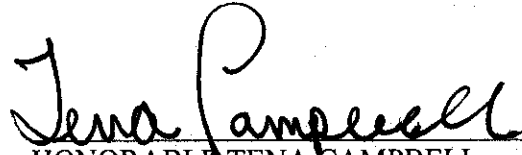
*Assoc. Case No. 2:08 CR 819 TS*

Based on motion of the defendant, stipulation of the government, and good cause  
appearing;

This Court ORDERS the transfer and reassignment of Case No. 2:99 CR 412 TC to Judge  
Ted Stewart.

DATED this 16 day of January, 2009.

BY THE COURT:



HONORABLE TENA CAMPBELL  
Chief United States District Court Judge